SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

No. 1103

GEORGE WILLIAM DODEZ, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPLICATION

for Bail Pending Disposition of Writ of Certiorari

TO THE SUPREME COURT OF THE UNITED STATES:

Now comes the petitioner, George William Dodez, and presents for consideration his application for bail pending a disposition of his case upon a writ of certiorari, if, as and when such writ is granted by this court. As ground therefor he states that this case "involves a substantial question which should be determined by the appellate court." (Rule 48 (a) (2), Rules of Criminal Procedure)

Application for bail pending appeal was made to the district court and was denied. (See record, page 121) On April 15, 1946, the court of appeals refused the petition

for bail. A copy of the order is attached and marked Appendix A. The reason that application for bail was not made to the court of appeals promptly after denial by the district court was because of the adamant and uniform holding of federal appellate courts that a situation of the kind presented upon the petition in this case was disposed of by the rule in *Falbo* v. *United States*, 320 U. S. 549, which was, as petitioner contends, erroneous. For this reason, upon denial of bail by the district court petitioner elected to enter upon service of the sentence imposed because he would receive no credit for time spent in the jail at Cleveland, Ohio, where he would have been held in custody pending appeal had he refused to elect to serve his time. Now that this court has issued its decision in *Estep* v. *United States*, 66 S. Ct. 423, and its orders about reargument and bail in *Gibson* v. *United States*, No. 221 October Term 1945, the petitioner abrogates his election to serve the sentence and renews his desire for bail until the validity of the judgment of conviction is determined by this court.

The question presented is correlative to that involved in *Gibson* v. *United States*, No. 221 October Term 1945, which arises under the same Act and the same Regulations as are to be considered in this case. Since bail was granted in the *Gibson* case, it should be allowed in this case. See the petition for writ of certiorari in this case, pages 11-12, 13-21, for a discussion of the substantiality of the question presented.

The reason petitioner desires bail is plain. It will restore his liberty which was taken away from him by the execution of sentence. If the judgment below is reversed and the case remanded for a new trial on which new trial he is again convicted, he will be required to serve another sentence, which will be two sentences served for one offense. If upon another trial he is acquitted, then his service of this sentence or any part thereof will be unjust. It is funda-

mental that to avoid injustice bail should be allowed where a substantial question is involved on an appeal. There is no way of restitution of the service of an illegal sentence in a criminal action. Therefore every reason inheres to give to a defendant contesting a judgment on appeal in a criminal case the same right that a defendant contesting a money judgment in a civil case has upon appeal, which is freedom from obligation to satisfy the judgment until the appeal is determined. Consequently it is time enough for a citizen to pay a judgment rendered against him when it becomes a final judgment upon appeal, especially where his adversary may be protected against loss by bond.

Wherefore petitioner prays that in event the writ of certiorari is granted he be admitted to bail pending the consideration of his case and the decision of this court.

HAYDEN C. COVINGTON
Counsel for Petitioner

APPENDIX A

No. 9947

UNITED STATES CIRCUIT COURT OF APPEALS
SIXTH CIRCUIT

GEORGE WILLIAM DODEZ, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

Before: Hicks, Allen and Martin, JJ.

ORDER

The application for bail in this court on April 11, 1946, is denied.

APPROVED FOR ENTRY:

Xenophon Hicks
Circuit Judge

April 16, 1946.